No. 97-259 (2)

Supreme Court, U.S.
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In The Supreme Court Of The United States

OCTOBER TERM, 19

In re: Ahmad Ali Massoud Ansari,
Debtor,

AHMAD ALI MASSOUD ANSARI,
Petitioner,

v.

REZA PAHLAVI and
MEDINA DEVELOPMENT COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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74 pp

PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to the proceeding. Medina Development Company has no parent or subsidiary entities.

TABLE OF CONTENTS

PARTIES TO THE PROCEEDING i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iv
STATUTES INVOLVED 1
OPINIONS BELOW 1

I. STATEMENT OF THE CASE 2

A. The Petition Misrepresents the Proceedings in the Circuit Court of Fairfax County, Virginia. 2

B. The Petition Misrepresents the Applicable Law. 8

C. Reasons for Denying the Writ. . . . 11

1. The Petition Presents No Important Question of Federal Law. 11

2. The Petition Presents No Novel Issue of Unsettled Law. 13

3. The Judgment Must be Sustained on Other Grounds. 14

II. CONCLUSION 15

APPENDIX TO RESPONDENT'S
BRIEF IN OPPOSITION . . . . . App. 1

TABLE OF AUTHORITIES

Cases Cited:

Bell v. Douglas, 184 B.R. 301 (N.D. Ill. 1995) . . . 9

Board of Airport Comm. of City of Los Angeles v. Jews for Jesus, 482 U.S. 569, 572 (1987) 14

Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 499-500 (1985) 12

Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1325 (11th Cir. 1995) 13

Butner v. United States, 440 U.S. 48, 57-58 (1979) 12

Central Hanover Bank & Trust, Co. v. Herbst, 93 F.2d. 510, 512 11

Gober v. Terra + Corporation (In re Gober), 100 F.3d 1195, 1205-06 (5th Cir. 1996) . . . 13

FDIC v. Daily (In re Daily), 47 F.3d 365, 368 (9th Cir. 1995) 13

Hildebrand v. Kugler (In re Kugler), 170 B.R. 291, 300 (Bankr. E.D. Va. 1994) 9

In re Niles, 106 F.3d 1456, 1460 (9th Cir. 1997) . 11

M & M Transmissions, Inc. v. Raynor (In re Raynor), 922 F.2d 1146 (4th Cir. 1991) 9

Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 21 (4th Cir. 1997) 2, 12, 14

Quaife v. Johnson, 4 F.3d 950, 955 (11th Cir. 1993) 11

Stanley v. First Nat'l Bank, 66 F.3d 664, 667 (4th Cir. 1995) 14

Transdulles Center, Inc. v. Sharma, 252 Va. 20, 472 S.E.2d 274 (1996) 8

Statutes Cited:

11 U.S.C. §§ 523(a)(2) 1, 8, 10, 14
11 U.S.C. §§ 523(a)(4) 8, 10, 11
11 U.S.C. §§ 523(a)(6) 1, 8, 10, 14

STATUTES INVOLVED

11 U.S.C. § 523(a)(2) provides as follows:

(a) A discharge under Section 727, 1141, 1128(a) 1128(b), or 1328(b) of this title does not discharge an individual debtor from any debt --

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by --

(A) false pretenses, a false representation, or actual fraud . . .

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

OPINIONS BELOW

The findings of fact and conclusions of law of the Circuit Court of Fairfax County, Virginia, October 24, 1991, imposing sanctions on Ansari, are reprinted in the Appendix to this Brief at pages 2 to 18.[1]

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[1]References to the Appendix to this Brief will be (Resp. App. ___). References to the Appendix to the Petition will be (App. ___).

The findings of fact and conclusions of law of the Circuit Court of Fairfax County, Virginia, awarding punitive damages against Ansari, given from the bench on November 25, 1992 are reprinted in the Appendix to this Brief at pages 19 to 23.

I. STATEMENT OF THE CASE

A. The Petition Misrepresents the Proceedings in the Circuit Court of Fairfax County, Virginia.

Ahmad Ali Massoud Ansari ("Ansari") portrays himself as the hapless victim of a mere procedural default entered by the Circuit Court of Fairfax County, Virginia, and characterizes the $7,277,425.56 compensatory award and the $2,000,000 punitive damage award, as tantamount to a scrivener's error. To the contrary, the judgment of the Circuit Court of Fairfax County, Virginia resulted from a grueling proceeding bitterly contested by Ansari for almost three years.

In its opinion upholding the bankruptcy court's grant of summary judgment against Ansari, the United States Court of Appeals touched upon the extent of the

actual litigation in the Circuit Court of Fairfax County, Virginia. See, App. 8-9, Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 21 (4th Cir. 1997). The Court of Appeals noted in its opinion that long before entry of sanctions against Ansari, the state court proceedings had involved extensive discovery and numerous hearings in the state court and before a commissioner appointed to take Ansari's accounting, and that the focus of this effort had been to determine the extent of Ansari's defrauding of Pahlavi and Ansari's misappropriation of his funds. As the Fourth Circuit carefully noted, it was only when Ansari refused to obey the state court's orders that sanctions were entered against him. The Fourth Circuit went on to observe that in imposing sanctions, the Circuit Court of Fairfax County, Virginia, did not impose a fine, but rather referred the matter for extensive hearings before the commissioner, and ultimately assessed compensatory damages against Ansari based on "the exact amount that Ansari, as a fiduciary, was found to have misappropriated from Pahlavi." (App. 8; 113 F.3d., at 21).

Thereafter, the Circuit Court of Fairfax County conducted a two day hearing to consider whether to award punitive damages. The Circuit Court of Fairfax County considered Ansari's conduct under a standard requiring proof of misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others, heard extensive testimony, and resolved conflicts in the evidence based upon the credibility of the witnesses, including testimony by Pahlavi, Ansari, and other witnesses. The Fairfax County Circuit Court expressly found misconduct by Ansari, specifically a pattern of conduct that occurred practically from the outset of the relationship between Pahlavi and Ansari, and, based upon these findings, awarded punitive damages. (App. 9; 113 F.3d at 21.)

The litigation briefly summarized by the Fourth Circuit in its opinion arose from Ansari's violation of his express, written pledge to Pahlavi to act as his fiduciary, to keep records of funds entrusted to him, and to disclose them on demand. When Pahlavi requested an explanation from Ansari of the handling of his funds, Ansari evaded and confabulated. When Pahlavi persisted in his demands

for an accounting, Ansari retaliated by burying what remained of Pahlavi's property under millions of dollars of liens, and sought to intimidate Pahlavi with threats to involve hostile foreign powers.

When this conflict boiled over into litigation in the Circuit Court of Fairfax County, Virginia, Ansari escalated his tactics into a bitter, running warfare that embroiled the parties in three years of grueling litigation, amassing a record of 20 hearings before the Circuit Court of Fairfax County, Virginia, and 29 hearings before the commissioner appointed to take Ansari's accounting. The transcripts of these hearings exceed 6,500 pages. (See Declaration of Robert H.J. Loftus, Exhibit No. 54 to Motion for Summary Judgment, In the United States Bankruptcy Court for the Eastern District of Virginia, Resp. App. 24).

During these proceedings, Ansari's contempt for his obligations to Pahlavi spread to the trial judge's repeated orders directing Ansari to disclose his handling of Pahlavi's funds. After a two day hearing examining Ansari's defiance of the court's orders, at which it was shown that Ansari deliberately concealed records and

selectively destroyed others, and operated a maze of shell accounts throughout Europe and the United States that hemorrhaged funds into accounts controlled by Ansari, his friends and family, the trial court ordered Ansari's pleadings, and his astounding $40,000,000 counter suit, stricken.

The Fairfax County Circuit Court, in a meticulous fifteen page opinion, issued October 24, 1991 (Resp. App. p. 2) chronicled Ansari's blatant misrepresentations and contempt for the orders of the Court, a situation so egregious that the Court found Ansari's conduct compromised the integrity of the judicial process, to the extent that the Court had no alternative but to strike Ansari's pleadings.

Almost a year later, after 18 more hearings before the Commissioner designed to determine the status of Ansari's accounts, formal written exceptions and numerous hearings before the court, and a re-submittal of the matter to the commissioner, the Fairfax Circuit Court finally determined the misappropriation by Ansari amounted to $7,277,425.56, and entered a decree

on September 2, 1992 awarding judgment against Ansari in that amount.

On November 24 and 25, 1992, trial took place on Pahlavi's demand for punitive damages against Ansari. The Fourth Circuit noted that, contrary to Ansari's characterization of this hearing to the effect that "no pertinent non-dischargeability issues were actually litigated," the punitive damage hearing did not rely solely on the allegations of the Complaint, but delved into Ansari's conduct. At the conclusion of the two day hearing, the Court weighed the credibility of the witnesses and expressly found Pahlavi's evidence more credible, and found a pattern of misconduct, misrepresentation, self-dealing and outright fraud by Ansari that occurred from the outset of the relationship between Pahlavi and Ansari and awarded punitive damages in amount of $2,000,000. (Resp. App. 19). Ansari appeared at this trial, as he had through out the entire proceedings, and was represented by counsel.

As even Ansari concedes, it is clear that the Fairfax Circuit Court determined long before it imposed sanctions on Ansari that Ansari was Pahlavi's fiduciary,

and ordered him to account. (Pet. p. 8.) The Fourth Circuit so found (App. p. 7; 113 F.3d at 20), and further found that the proceedings before the state court resolved the question of Ansari's defalcation, both in the hearings before the commissioner, and the trial before the Circuit Court on the question of punitive damages. (App. 7-9; 113 F.3d at 20 to 21).

The judgment against Ansari was a "default" judgment in name only. All of the elements essential to a finding of non-dischargeability under the 11 U.S.C. § 523(a)(2), (4) and (6), were actually litigated and resolved against Ansari.

B. The Petition Misrepresents the Applicable Law.

There is no question in this case that the Court of Appeals for the Fourth Circuit was correct in finding that Virginia law controls the preclusive effects of Virginia judgments in federal courts, and Ansari concedes this point. (Pet. p. 6)

The controlling precedent from Virginia on the effect of a "default" judgment is Transdulles Center, Inc.

v. Sharma, 252 Va. 20, 472 S.E.2d 274 (1996). In Transdulles, the Virginia Supreme Court expressly rejected the position set forth in the Restatement (Second) of Judgments, § 27 cmt.e (1982), that default judgments have no collateral estoppel effect. To the contrary, the Virginia Supreme Court concluded that Virginia law does not support a blanket exemption from the application of collateral estoppel in the case of a default judgment. (Id.)

In Transdulles, the Virginia Supreme Court held that a judgment, based upon testimony and exhibits ex parte, where the defendant did not even appear for trial, was entitled to collateral estoppel effect, as it constituted actual litigation of the issues presented to the court.

The authority cited by Ansari for the proposition that a "default" judgment is not sufficient to satisfy the actual litigation requirement, is totally inapposite. See, e.g., Hildebrand v. Kugler (In re Kugler), 170 B.R. 291, 300 (Bankr. E.D. Va. 1994), M & M Transmissions, Inc. v. Raynor (In re Raynor), 922 F.2d 1146 (4th Cir. 1991); Bell v. Douglas, 184 B.R. 301 (N.D. Ill. 1995). None of these cases apply Virginia law, much less the clearly articulated rule of Transdulles. Moreover, each involved

situations of "pure" default where the court made no independent investigation, the debtor did not know of the proceedings, and no evidence was presented. M & M Transmissions, Inc. (Id.) (default judgment entered because debtor failed to appear and had no notice and no evidence presented on fraud issue); Hildebrand (Id.) (judgment entered based upon request for admissions and summary judgment motion never served on debtor); Bell (Id.) (judgment based solely upon failure to respond to request for admissions found inadequate under Iowa law.)

As the United States Court of Appeals for the Fourth Circuit noted in discussing Transdulles, the evidence presented in the case at bar vastly exceeded that deemed sufficient by the Supreme Court of Virginia to constitute actual litigation such as to permit collateral estoppel effect. All of the key elements essential for the application of collateral estoppel under 11 U.S.C. § 523 were actually litigated in the state court proceedings, e.g., that Ansari was Pahlavi's fiduciary, that he misappropriated over $7,000,000 from Pahlavi and that

this misappropriation arose from a long standing pattern of defalcation, misrepresentation, and self-dealing.

Ansari fails to deal with the well-settled law that where a fiduciary has been found to be short in his accounts, or has failed to properly account for fund entrusted to him, this amounts to a defalcation under 11 U.S.C. § 523(a)(4). In re Niles, 106 F.3d 1456, 1460 (9th Cir. 1997); Quaife v. Johnson, 4 F.3d 950, 955 (11th Cir. 1993) (citing Central Hanover Bank & Trust, Co. v. Herbst, 93 F.2d. 510, 512 (2nd Cir. 1937 (Learned Hand, J.)). Ansari completely fails to show how he accounted for the funds entrusted to him, or how he was denied an opportunity to do so. Ansari's defalcation was plainly made out and the judgment is nondischargeable.

C. Reasons for Denying the Writ.

1. The Petition Presents No Important Question of Federal Law.

The case brought here by Ansari's Petition involves only the application of a state rue of

decision to the facts and circumstances of this case, and raises no important federal question. In Pahlavi v. Ansari (In re Ansari), supra, the United States Court of Appeals for the Fourth Circuit applied Virginia principles of collateral estoppel to a Virginia judgment in the context of a dischargeability issue under bankruptcy law. Ansari presents no conflict among the United States Courts of Appeals or between those courts and a state court of last resort. Ansari does not show how this decision is of sufficient moment to warrant review by this Court. The case presented in this decision is confined to the relatively rare problem presented by a debtor who seeks to discharge in bankruptcy the consequences of his obstruction of a judicial proceeding.

Moreover, as this case arises from the application of Virginia law, Ansari fails to carry his burden of showing the compelling reasons required for review of decisions by courts of appeals based upon local law. The courts of appeals are generally considered expert tribunals of the laws of the states within their circuits. Butner v. United States, 440 U.S. 48, 57-58 (1979); Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 499-500 (1985).

2. The Petition Presents No Novel Issue of Unsettled Law.

With its decision in Pahlavi v. Ansari (In re Ansari), supra, the Fourth Circuit joined the growing consensus of the courts of appeals that have held that where a party appears and litigates a matter, a default judgment subsequently entered for discovery violations can have collateral estoppel effect in a later case. See, Gober v. Terra + Corporation (In re Gober), 100 F.3d 1195, 1205-06 (5th Cir. 1996); Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1325 (11th Cir. 1995); FDIC v. Daily (In re Daily), 47 F.3d 365, 368 (9th Cir. 1995). Ansari's position that the Bankruptcy Code should afford a refuge for those litigants that choose to defy the authority of the judiciary to manage the cases before it, has been dealt with by the courts of appeals in clear and certain terms, and their opinions are not in need of clarification.

3. The Judgment Must be Sustained on Other Grounds.

On certiorari, this court may affirm the result on different grounds if fully supported by the record. Board of Airport Comm'r v. Jews for Jesus, 482 U.S. 569, 572 (1987). Although the bankruptcy court clearly recognized that the state court found wilful and malicious conduct by Ansari (App. 32), it denied the motion for summary judgment on this point, apparently in the belief that it was required to hear more evidence. (App. 33-34). The record is plain that the state court judgment amounted to a finding of wilful and malicious conduct, and fraud, and the judgment is nonchargeable under 11 U.S.C. § 523(a)(2) and (6).

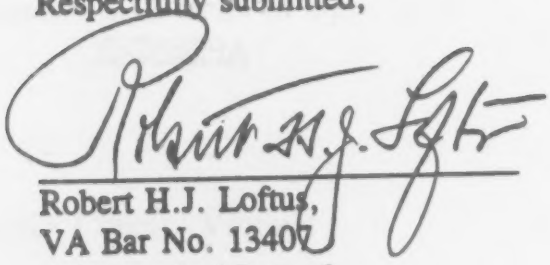
"Wilful conduct" for the purposes of Section 523(a)(6) is deliberate or intentional conduct. The debtor need not be shown to have an intent to harm his creditor, but only to have performed an act which would necessarily harm the creditor. "Malicious" means "wrongful, and without just cause or excuse." Stanley v. First Nat'l Bank, 66 F.3d 664, 667 (4th Cir. 1995). As

the bankruptcy court plainly recognized, the Fairfax County Circuit Court expressly found that Ansari made intentional misrepresentations designed to mislead Pahlavi concerning Ansari's use of Pahlavi's funds, knowingly used Pahlavi's funds for unauthorized activities, including, but not limited to, improper borrowing and wrongful encumbering of Pahlavi's property and engaged in a pattern of wilful concealment of financial activities amounting to self-dealing. (Resp. App. 19 to 23). The verdict of the state court clearly established that Ansari's conduct was wilful and malicious, and fraudulent, and discharge of the judgment must also be denied under 11 U.S.C. § 523(a)(2) and (6).

II. CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari to review the opinion and order of the United States Court of Appeals for the Fourth Circuit should be denied.

Respectfully submitted,



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APPENDIX

TABLE OF CONTENTS

Appendix to Respondent's Brief in Opposition

Opinion

Circuit Court of Fairfax County, Virginia

October 24, 1991 . . . . . App. 2

Opinion

Circuit Court of Fairfax County, Virginia

November 25, 1992 . . . . . App. 40

Declaration

by Robert H.J. Loftus, Esquire . . . . . App. 47

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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RE: Medina Development Company, et al. V. Ahmad Ali Massoud Ansari, et al.; Chancery No.115845

Ahmad Ali Massoud Ansari v. Reza Pahlavi, et al.

At Law No.97435

Dear Counsel:

This matter involves two cases, Medina Development Company, et al. v. Ahmad Ali Massoud Ansari, et al., Chancery No.115845, and Ahmad Ali Massoud Ansari v. Reza Pahlavi, et al., At Law

No.97435. Both cases involve many of the same parties, principals, and instrumentalities at issue.

In the chancery case, the Bill of Complaint contains allegations of various breaches of fiduciary duty, breach of contract, slander of title, fraud and a prayer for an accounting. It is further alleged that Mr. Ansari, the defendant in the chancery matter, was a fiduciary of the complainant, Reza Pahlavi ("Pahlavi"), the son of the late Shah of Iran. Mr. Ahmad Ali Massoud Ansari ("Ansari") is a citizen and resident of the Commonwealth of Virginia, who allegedly served as Mr. Pahlavi's financial consultant. Medina Development Company ("MDC") is alleged to be a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Georgia. In the Bill of Complaint, there are allegations that Mr. Pahlavi and MDC were injured by

the actions of Mr. Ansari and Mid-Continental Bank and Trust ("MB&T"). No specific amount of damages is prayed for in the chancery case. However, the breadth of the allegations suggests that many millions of dollars are involved in the subject transactions.

In the law action, Mr. Ansari has sued Mr. Pahlavi and MDC for breach of contract, fraud, misappropriation of stock, declaratory judgment as to the ownership of the stock, abusive process, defamation, slander, and tortious interference with prospective economic advantage. Mr. Ansari demands judgment in the amount of ten million dollars in compensatory damages and ten million dollars in punitive damages.

The Court has disposed of several counts in the law case. Count V of the law case, which alleged constructive fraud, was dismissed when Mr. Pahlavi's

demurrer was sustained. Also, summary judgment was granted in favor of Mr. Pahlavi for Count VII, which alleged interference with prospective contractual relationship or business expectancy, and partial summary judgment was granted for breach of contract claims in Count I that went beyond the pertinent statute of limitations.

Various discovery matters have been heard by this Court since May of 1990. Several orders and decrees have directed Mr. Ansari and MB&T to comply with this Court's rulings regarding discovery. The instant motion for sanctions involves alleged violations of this Court's orders and decrees by Mr. Ansari and MB&T.[2]

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[2]Except where the context suggests otherwise, this opinion will use "decree" and "order" interchangeably.

All parties have agreed that the evidentiary hearing should encompass both the law and chancery cases to avoid the necessity of a separate hearing for each case. Therefore, the Court has consolidated the law and chancery cases for purposes of determining the motion for sanctions.

The posture of these cases is such that neither can go forward to trial until the Court can be assured that there has been compliance with its discovery orders and decrees. An important aspect of these cases involves the disclosure and production of numerous documents that pertain to many complex financial transactions spanning nearly a decade. Mr. Ansari's position, which has been repeatedly asserted in Court, is that many of the documents involving the subject transactions have been destroyed at the direction of Mr. Reza Pahlavi. Mr.

Pahlavi, by counsel, has denied giving any such instructions to Mr. Ansari. Mr. Pahlavi argues that in order for him to prove his case against Mr. Ansari and to defend against Mr. Ansari's allegations all existing documents associated with the subject transactions must be produced.

The complexity of these transactions and their number would make it extremely difficult for a litigant to either prove or defend against claims without the necessary documentation for the trier of fact to understand the transactions involved.

A. Findings With Regard to Non-Compliance of Discovery Orders and Decrees

1. Medina Account Records

One of the more serious allegations of non-compliance with the Court's prior orders and decrees involves the discovery of Med ma account records in the basement of Mr. Ansari's house. On numerous occasions before this Court, counsel[3] for Mr. Ansari has represented that financial records had been destroyed at the request of Mr. Pahlavi. Not only has counsel for Mr. Ansari made these representations, but Mr. Ansari himself has sworn under oath that the representations are true. For example, the Court notes that in Plaintiff's answers to the Defendant's first set of interrogatories, submitted July 10, 1990, there is a representation that all records related to investments and re-investments by Mr.

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[3]This is a reference to Mr. Ansari's prior counsel, Mr. Tomar, who was allowed to withdraw.

Ansari had been destroyed. In his response to Interrogatory Number 4, Mr. Ansari states in pertinent part that" . . . Dr. Kasrai, president of MB&T, was ordered by Mr. Pahlavi to destroy all unnecessary documents." (Answers of Respondent Ahmad Ah Massoud Ansari to First Set of Interrogatories of Complainant Reza Pahlavi at page 2.) With regard to the discovery requests to MB&T, the answers were the same.

Despite Mr. Ansari's representations that these documents had been destroyed, on February 20, 1991, he told a completely different story. First, Mr. Ansari acknowledged that indeed American bank records for Medina did exist. Next, he stated that Mr. Shirzadi, former vice-president of Medina, had kept statements, records, and canceled checks from the banks where Medina maintained accounts. (February 20, 1991,

Deposition of Ahmad All Massoud Ansari at pages 25, 28.)

Mr. Ansari had knowledge of these records yet had repeatedly asserted before the Court that no such records existed. He also has stated that he did not know where any of the records were located. (Supplemental Responses of Respondent Ahmad All Massoud Ansari to First Request for Production of Documents of Complainant Reza Pahlavi.) However, he knew that Mr. Shirzadi had been responsible for keeping these records, but never inquired of Mr. Shirzadi, the former vice-president of Med ma, as to whether Mr. Shirzadi had the records. (February 20, 1991 Deposition of Ahmad All Massoud Ansari at page 26.) As it turns out, the documents were in Mr. Ansari's basement all along. Mr. Shirzadi testified that he had placed the documents there

sometime in 1989. (Transcript of July 16, 1991 at page 116.)

The Court does not find Mr. Ansari's explanations for this turn of events to be credible.

II. Accounts at the First National Bank of Atlanta

Given Mr. Ansari's position that documents covering many of the financial transactions at issue had been destroyed, it was incumbent upon Mr. Ansari to give complete answers to the interrogatories concerning these transactions so that existing documents could be found. Mr. Ansari's failure to reveal the existence of the First National Bank of Atlanta accounts amounts to a serious breach of the discovery orders. The first set of interrogatories requested the names and addresses of all financial institutions with which MB&T had maintained any financial or correspondent relationship. Mr. Ansari's

answer to that interrogatory failed to disclose the existence of Mid-Continental Holding Company, which was a controlled entity of MB&T. Mid- Continental Holding Co. was formed in 1986 to run MB&T's business. (March 6, 1991, Deposition of Bijan Kasrai, Ph.D. at pages 305, 307, 310, 324). Mid- Continental Holding Co. had two accounts at the First National Bank of Atlanta. Neither of these accounts was revealed in any discovery response. No documentation or other record of these accounts was ever produced. (Responses of Respondent Ahmad Ali Massoud Ansari to First Request for Production of Documents of Complainant Reza Pahlavi number 27 at page 7; Response of Respondent Mid- Continental Bank and Trust (West Indies) Limited to Complainant Reza Pahlavi's First Request for Production of Document number 3 at page 2.)

Mr. Ansari explains his non-compliance to the Court by contending that he was never an officer or employee of MB&T, and by denying that he ever operated any part of MB&T (See Post Sanctions Hearing Brief of Ahmad Ali Massoud Ansari and Mid-Continental Bank & Trust Corporation at 3 and 24) and, therefore, was never privy to this information. However, Mr. Ansari responded to the discovery request on behalf of MB&T as chairman of the board of MB&T. As chairman, Mr. Ansari received compensation of $20,000 in 1989. (Answers of Respondent Ahmad Ali Massoud Ansari to First Set of Interrogatories of Complainant Reza Pahlavi, number 14 at page 6.)[4] Furthermore, the discovery

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[4]This further undercuts Mr. Ansari's argument that the Court must consider MB&T and Mr. Ansari's answers separately. Technically, this is correct and the Court has proceeded In this manner. However, the distinction has

answers show that Mr. Ansari held fifty percent of the shares in Mid-Continental Holding Co. during the relevant time period. (Answers of Respondent Ahmad Ali Massoud Ansari to First Set of Interrogatories of Complainant Reza Pahlavi, number 16 at page 7.) As chairman of the board of MB&T and, designated respondent Mr. Ansari was responsible for fully answering the interrogatory and was in a position to produce documentation of these accounts when first

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somewhat been blurred throughout this case because Mr. Ansari has answered for MB&T as its chairman of the board while simultaneously answering for himself personally. Therefore, the Court considers information Mr. Ansari has in his personal capacity to be knowledge he possesses in his corporate capacity. Similarly, the knowledge which he possesses as a plaintiff in the law case, is knowledge which he possesses as a defendant in the chancery case.

requested. Even if the Court assumes that Mr. Ansari had no personal knowledge of MB&T operations, all he had to do was to ask Dr. Kasrai who had the requested information. Moreover, the Court is not satisfied with Mr. Ansari's explanation that he "forgot" that an account was ever maintained with First National Bank of Atlanta. (Post Sanctions Hearing Brief of Ahmad All Massoud Ansari and Mid-Continental Bank & Trust Corporation at 11.)

To wait until the eleventh hour and to now assert that nearly all documents have been received by Mr. Pahlavi does not excuse Mr. Ansari's failure to respond in a timely manner. The most recent Court order for production was entered on January 14, 1991, which compelled Mr. Ansari and MB&T to produce "all non-Swiss records

...by January 25, 1991 . . . " (January 14, 1991, Order Compelling Discovery.)

First National Bank of Atlanta keeps its records for only seven years. As a result of the delay in revealing these accounts, Mr. Pahlavi is unable to retrieve account records beyond the seven years.

III. Union Bank, Switzerland

In response to paragraph number 27, of the first production request to Ansari and paragraph number 3 of the first production request to MB&T, Mr. Ansari states in part that he does not know whether certain records of MB&T had been destroyed. These documents were also requested by subpoena duces tecum. With regard to this production request, MB&T states that they will produce "if available." (Response of Respondent Mid-Continental Bank and Trust (West Indies) Limited to Complainant

Reza Pahlavi's First Request for Production of Documents at page 2.)

Mr. Ansari has stated at deposition that these records were not destroyed and that Dr. Kasrai, president of MB&T, had them. This record is replete with the difficulties in obtaining bank account information from the Union Bank of Switzerland and other foreign banks. Yet, Mr. Ansari has misled the court by his responses, and MB&T has failed to produce the documents in a timely manner. If he purports to be answering discovery either for himself or on behalf of MB&T, as he has done throughout this litigation, Mr. Ansari has a duty to make reasonable inquiry before responding, and then to respond honestly and completely in a timely manner. In these cases, that was not done.

More inconsistencies by Mr. Ansari can be found in his post sanctions hearing brief of August 1, 1991. In that brief, Mr. Ansari states that "there is not now nor have there ever been, bank accounts of any of the Defendants at the Union Bank of Switzerland." (Post Sanctions Hearing Brief of Ahmad Ali Massoud Ansari and Mid-Continental Bank and Trust Corporation at 15.) However, this is contradicted by Mr. Ansari's deposition testimony of February 20, 1991. At the deposition he said that $200,000, obtained from National Bank of Washington had been used to pay back an MB&T loan taken through the Union Bank of Switzerland (Feb uar,' 20, 1991 deposition of Ahmad Ali Massoud Ansari at 31.[5])

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5 The relevant portion reads:

Q. So the $200,000 that you paid back out of the funds borrowed from the National

IV. Merrill Lynch Account Statements

Mr. Ansari's financial records were requested under paragraph 56 of the First Request for Production. The request included the production of account statements of Merrill Lynch. Mr. Ansari has produced account statements only for the period from 1981 to September 1987.

Lauren Brueggen, a loan officer at First Fidelity Mortgage Corporation, testified that Mr. Ansari applied for a loan to refinance his home around October of 1990. (July 16, 1991 hearing, transcript page 75.) Mr. Ansari

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Bank of Washington went to pay back a loan arranged by Dr. Kasrai.

A. Yes, through Union Bank of Switzerland.

Q. And in whose name was this loan taken, MB&T?

A. Yes.

submitted a number of his Merrill Lynch monthly statements to Ms. Brueggen in support of his application for the loan.

Judge Stevens ordered production of these statements by order dated July 9, 1990. A subsequent order dated January 14, 1991, was entered ordering the same documents to be produced. Mr. Ansari has possession of these documents. They were not produced in a timely manner by Mr. Ansari despite orders of this Court to do so.

V. Kredietbank Luxemburg Records

MB&T was ordered to produce documents covering Kredietbank Luxemburg and Grindley's Bank records by order of Judge Stevens (June 29, 1990, Order Denying Motion to Quash Service of Process) in the law

production request to Ansari in the chancery case. Also paragraph number 3 of the first production request to MB&T required production of these documents. The Courts decree of January 14, 1991, ordered certain information be provided if Mr. Ansari claimed documents were "unavailable."

As in other instances, Mr. Ansari has stated that he did not have these documents and that they have been disposed of or destroyed. (See for example Ansari's deposition at page 23). The documents were never produced in a timely manner despite the subpoena duces tecum. Judge Stevens' order of June 29,1990 required MB&T to produce all documents by July 11, 1990. The subpoena had been directed to Mr. Ansari as chairman of the Board of Directors of MB&T. On July 17, 1991, over a year later, Mr. Ansari testified that records were not

destroyed after Mr. Pahlavi brought charges in Switzerland. (Deposition of Ahmad All Massoud Ansari at page 28.) Mr. Ansari also testified that Dr. Kasrai, president of MB&T should have the records. (July 17, 1991 hearing at page 28.) Mr. Ansari's response to counsel's questions on July 17, contradicts his prior response given at his deposition in February of 1991 (Deposition of Ahmad Ali Massoud Ansari at page 23.) Mr. Ansari's deposition response was incomplete and misleading. Mr. Ansari's deposition response was contradicted further by Dr, Kasrai who stated at his deposition that he was never ordered to destroy records and in fact never destroyed any. (March 6, 1991, Deposition of Bijan Kasrai at pages 140, 193, 204.) With Mr. Ansari's later admissions and Dr. Kasrai's deposition testimony, the Court can only conclude that some records

did exist and that this fact was known to Mr. Ansari. Mr. Ansari had reason to know at the time that he responded to the request for production that Dr, Kasrai, an officer of MB&T, had the documents.

VI. E. F. Hutton Records

Production of E. F. Hutton records is requested by paragraph number 27 of the first request for production to Ansari and paragraph number 3 of the first request for production to MB&T. These documents also were requested by subpoena duces tecum in the law case.

As before, Mr. Ansari has responded that these\ documents either do not exist or that he does not know where they are if they do exist. Dr. Kasrai has testified that Certain telexes of E. F. Hutton transactions do exist. (March 6, 1991, Deposition of Bijan Kasrai at page 137.) As noted before, this request was covered by a subpoena

duces tecum to MB&T in care of Mr. Ansari. To date, these documents have not been produced. No credible explanation has been provided to the Court as to why MB&T has not produced these documents. Moreover, Mr. Ansari's responses to discovery in his own behalf and on behalf of MB&T are deceptive and misleading.

The E. F. Hutton documents are material to both the chancery and law cases. In his law claim, Mr. Ansari is suing for commissions which would include monies due him for transactions involving E. F. Hutton. One of the issues in the case will be whether these investments were prudent ones. Moreover, these records are critical in order for there to be a proper accounting.

VII. Bank Paribus. New York

Records of Bank Paribus of New York were requested by paragraph 27 the first request of production

to Ansari and the first request of production to MB&T. These documents were subject to a subpoena duces tecum in the law case. Also, account information was requested by interrogatories number 5 and 6 at the first set of interrogatories to Mr. Ansari and MB&T, respectively.

Although the existence of the Bank Paribus account was revealed in a timely manner, no explanation has been given for the nonproduction of these documents. If the documents were destroyed, then Mr. Ansari had an obligation to tell under what circumstances they were destroyed or where they could be found if they were not destroyed. (January 14, 1991, Order Compelling Discovery at pages 3 and 4.)

VIII. Mid-Continental Financial Services. Inc.

Documents for Mid-Continental Financial Services, Inc. were requested by paragraph 27 of the first

request for production to Ansari and paragraph number 3 of the first request for production to MB&T.

Mid-Continental Financial Services Inc. was set up as an agency of MB&T for operations in England. Mid-Continental Financial Services was 80% or 90% owned by MB&T. (March 6, 1991, Deposition of Bijan Kasrai at pages 313 through 314.) Although MB&T has control over Mid-Continental Financial Services, it is not clear that Mid-Continental Financial Services possessed any records relating to Medina or Pahlavi. Therefore, this request cannot be the subject of sanctions until it can be determined whether documents relating to this litigation are in the possession of Mid- Continental Financial Services, Inc.

B. Applicable Legal Standards for AwardIng Sanctions

The Court finds that Mr. Ansari and MB&T have\ failed to comply with various orders and decrees for discovery, and that in some instances these failures were willful. Mr. Pahlavi has argued that the sanction of dismissal in the law case and default judgment in the chancery case are the only appropriate remedies.

In National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976), a case similar to this one, the U.S. Supreme Court held that the sanction of dismissal was appropriate. In that case, the U. S. Supreme Court upheld a District Court's dismissal of a party's action for failure to timely answer written interrogatories as ordered by the District Court. The District Court had relied on Rule 37 of the Federal Rules of Civil Procedure. There are marked similarities between

Rule 37 and Rule 4:12 of the Rules of the Supreme Court of Virginia.

The parties have not cited any Virginia cases similar to this one. However, other jurisdictions have established standards for determining when extreme sanctions are appropriate. Mr. Ansari references a four-part test on page 21 of the post- sanctions hearing brief of Ahmad Ali Massoud Ansari and Mid-Continental Bank and Trust Corp. This test appears to be taken from Mutual Federal Savings & Loan v. Richards & Associates 872 F.2d 88, 92 (4th Cir. 1989). Under Mutual Federal, the four part test consists of:

> (1) whether the noncomplying party acted in bad faith; (2) the amount of prejudice his noncompliance

> caused his adversary, which necessarily includes an inquiry into the materiality of the evidence he failed to produce; (3) the need for deterrence of the particular sort of noncompliance; and (4) the effectiveness of the less drastic sanctions.

Id. citing to Wilson v. Volkswagen of America, Inc., 561 F.2d 494, 503-04 (4th Cir. 1977), cert. denied 434 U.S. 1020 (1978). Assuming that the four-part test is appropriate, the Court finds that the ultimate sanctions of dismissal and default judgment are appropriate.

Mr. Ansari has misled the Court during the entire discovery process. Additionally, he has willfully failed to comply with orders issued by the Court. The Court finds that this satisfies any bad faith standard or requirement referenced in Mr. Ansari's brief.

Secondly, Mr. Ansari notes that the Court must consider the amount of prejudice resulting from non-compliance. While the Court recognizes Mr. Ansari' S compliance in producing numerous documents, the Court also recognizes that other documents essential to reconstructing the complex financial transactions were not timely produced. These documents are like pieces of a puzzle. Without full production, there are only fragments of what transpired and no means by which the whole "picture" can be constructed.

One example of this involves Mr. Ansari's ability to change his story over time. in Mr. Ansari's answer to interrogatory number 21 of the first set of interrogatories of complainant Reza Pahlavi, he states under oath that the Obses shares were held by him as Mr. Pahlavi's nominee. However, at the hearing on July 17, 1991, Mr. Ansari testified that he held the shares for "the system." This directly contradicts his prior discovery response. To the Court's knowledge, Mr. Ansari has never supplemented his response to the interrogatory to clarify his\ relationship with the Obses Establishment. Mr. Ansari's belated revelation presents Mr. Pahlavi with another issue that was supposedly settled by virtue of the interrogatory response of over a year ago.

Another example of this is the failure of Mr. Ansari to reveal the documents concerning First National

Bank of Atlanta. Mr. Ansari failed to disclose the existence of these accounts. Because these accounts did not come to Mr. Pahlavi's attention until late in the process, a number of related documents have been purged from First National Bank's system. These documents may be forever lost for Mr. Pahlavi. Additionally, Mr. Pahlavi has been prejudiced by the expense and time that counsel has had to spend in Court. Orders and decrees have been entered and ignored by Mr. Ansari. Given the misrepresentations Mr. Ansari has made to the Court in the past, the Court does not believe he will ever comply with this Court's discovery orders. To continue these cases would cause undue expense to all parties involved.

The third part of Mr. Ansari's test calls for a look at the need for deterrence of the particular sort of non-compliance. In this case the non-compliance has been of

an egregious nature. It must be addressed and cannot be allowed by the Court if any form of efficiency is to be maintained throughout the judicial process.

This leads the Court into the fourth prong of Mr. Ansari's argument, that is the potential effectiveness of less drastic sanctions. This Court has given prior warnings and has entered prior discovery orders covering the matters at issue. At this juncture, the Court cannot be assured of full compliance with discovery, and Mr. Pahlavi cannot be assured a fair trial. Fairness of the process in these particular cases rests upon a presumption of good faith on Mr. Ansari's part. Although Mr. Ansari has claimed that many of the documents requested have been destroyed, he nonetheless has refused to fully and completely answer interrogatories and to comply with requests for production which could lead to the discovery

of existing documents in the hands of other persons and institutions. Furthermore, late compliance with his responsibilities has caused undue delays in obtaining documents from sources on foreign soil and In locating other discoverable matters. Viewing the case from that posture, the integrity of the process has been compromised by Mr. Ansari's bad faith.

Mr. Ansari argues that the actions of MB&T are separate from his own actions. However, the discovery in the law case was directed to MB&T in care of Mr. Ansari, Chairman of the Board of Directors. Mr. Ansari was responsible for complying with the request. Mr. Ansari, the plaintiff In the law case, has caused MB&T, a non-party, to violate discovery orders.

A plaintiff, by his actions or inactions, cannot be allowed to obstruct discovery directed to a non-party.[6]

Conclusion

In any document driven case, compliance with discovery is essential. In the instant case, Mr. Ansari has repeatedly failed to respond to discovery requests and to answer subpoenas duces tecum. Mr. Ansari's excuses for his failure to comply have changed throughout this litigation. After consideration of the orders and decrees, the evidence and oral argument at the sanctions hearing, the numerous briefs submitted, discovery requests and responses, and representations made in prior proceedings,

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[6]Rule 4:1 2(b)(2) allows a court to sanction a party who fails to obey an order to provide or permit discovery, and to enter such orders in regard to such failure as are just. The Court believes this rule is broad enough to encompass Mr. Ansari's actions on behalf of MB&T.

the Court finds that Mr. Ansari and MB&T have repeatedly violated this Court's discovery orders and decrees. Moreover, the Court finds that Mr. Ansari misled this Court throughout this litigation and has acted with a lack of diligence and good faith. While no single discovery violation standing alone may warrant dismissal and default judgment, taken together these violations indicate a pattern of concealment and haphazard compliance that is unacceptable.

Mr. Ansari's actions have had an irreversible impact on the course of this litigation. Under the applicable case law, and the broad discretion given to trial courts in determining what sanctions to impose, this Court finds that the sanctions of dismissal in the law case and judgment on the pleadings in the chancery case, are appropriate. Woodbury v. Courtney, 239 Va. 651,654

(1990); First Charter Land Corp. v. Middle Atl. Dredging, Inc., 218 Va. 304 (1977).

Based upon the foregoing, the Court hereby Orders and Decrees that the Law case be dismissed and that default judgments be entered against the defendants, Mr. Ansari and MB&T in the Chancery case. Mr. Loftus will please draft an Order reflecting the Court's ruling and submit it to Mr. Lubin for his endorsement.

Sincerely,

Marcus D. Williams

MDW\DJ\cw

cc: Kathleen McTeague, Esq.
Robert L. Brager, Esq.
Robert E. Scully, Jr., Esq.

Geoffrey D. Gitner, Esq.

Richard Tomar, Esq.

William F. Krebs, Esq.

PARTIAL TRANSCRIPT

Fairfax, Virginia

Wednesday, November 25, 1992

The trial commenced at 9:15 o'clock, a.m.

BEFORE:

The Honorable Marcus D. Williams, Judge

APPEARANCES FOR THE COMPLAINANT:

ROBERT H. J. LOFTUS, ESQ.

Miles & Stockbridge

11350 Random Hills Road

Fairfax, Virginia 22030

Reported by: Mindy Belcher

FOR THE DEFENDANT:

ROBERT LUBIN, ESQ.

1211 Connecticut Avenue, N.W.

Suite 620

Washington, D.C. 20006

PROCEEDINGS

(Thereupon, the witnesses were sworn.)

(Thereupon, the court reporter was sworn.)

. .

THE COURT: I recognize that this has been a long two days. So I will give a brief summary of my decision in this case.

The legal standard I'm applying for the punitive damages is as follows: Proof of misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others. That is the language quoted in Jordan versus Suave, 219 Virginia 448.

I believe that is the applicable standard that must be met in this case. As an aside, the opinion in that case does refer to criminal indifference as being a sub-part to this standard.

It is also clear that the purpose of punitive damages is, of course, not compensation, but to punish the wrongdoer. So with this in mind, the Court now turns to the evidence presented in this case.

First, the Court looks to the credibility of the witnesses to determine which version of what was testified to is persuasive. Obviously, there are diametrically diametrically positions on what occurred during almost ten years of transactions.

The Court recognizes some recollections may have dimmed over that time period. But the Court has, nonetheless, been able to ascertain the relative credibility of the witnesses.

And the principal witnesses in this case, of course, were Mr. Wagner, Mr. Pahlavi, and Mr. Ansari. On the evidence presented, I find Mr. Wagner's and Mr. Pahlavi's evidence to be more credible than Mr. Ansari's.

I further find that the misconduct complained of here was not of an isolated single transaction, but instead was a pattern of conduct that occurred practically from the outset of the relationship between Mr. Pahlavi and Mr. Ansari.

Some of Mr. Ansari's conduct can be described as willful concealment of financial activity, supposedly undertaken on behalf of Mr. Pahlavi.

I find that Mr. Ansari knowingly gave false reassurances that all was well with Mr. Pahlavi's investments when, in fact, all was not well. Further, Mr. Ansari intentionally misled Mr. Pahlavi concerning his investments and his activities.

I find that Mr. Ansari engaged in transactions that were not authorized by his principal. Mr. Ansari stepped beyond the bounds of his authority to borrow on behalf of Mr. Pahlavi and that he wrongfully encumbered his property.

Mr. Ansari knew he had no authority to act in this manner. These unauthorized activities were not for Mr. Pahlavi's benefit but were for the benefit of Mr. Ansari's own interests.

I find that Mr. Ansari's conduct goes beyond mere negligence. The findings I make are based on the consideration of all of the evidence presented. What I have just summarized begins the summary.

I also find that -- or my findings are based on matters which occurred prior to July 1, 1988. The so-called cap on punitive damages would not appear to be applicable in this matter.

Using the standard I announced earlier, I find that Mr. Ansari's conduct warrants an award of punitive damages in the amount of $2 million in favor of Mr. Pahlavi. I am not going to award any punitive damages against MB&T. That is the judgment of the Court.

Mr. Loftus, you prepare the order, please.

MR. LOFTUS: Yes, I will, Your Honor. And I will be here on December 4th. Would it be appropriate to notice it for the 4th?

THE COURT: That's my next civil date, right?

THE CLERK: Yes.

THE COURT: Yes, sir. You can do that for now.

MR. LOFTUS: Thank you, Your Honor. I will draft the order and submit it to Mr. Lubin as soon as possible.

THE COURT: All right. Thank you. The Court is adjourned.

(Thereupon, at 7:30 o'clock, p.m., the trial in the above-entitled matter was concluded.)

CERTIFICATE OF REPORTER

I, Mindy Belcher, do hereby certify that the testimony of the witness in the foregoing trial was taken by me and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the requested excerpt of testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

_____

Mindy Belcher, Court Reporter

Brian F. Kenney, Esquire
Virginia Bar #23199
Robert H. J. Loftus
Virginia Bar #13407
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, Virginia 22030
(703) 273-2440

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	
	)	
	)	
AHMAD ALI MASSOUD ANSARI,	)	Case No. 93-11245-AB
Debtor.	)	(Chapter 7)
	)	
	)	
REZA PAHLAVI and MEDINA DEVELOPMENT COMPANY,	)	
	)	
	)	
Plaintiffs,	)	
	)	Adversary Proceeding
v.	)	No. 93-1183
	)	
AHMAD ALI MASSOUD ANSARI,	)	
	)	
Defendant.	)	

DECLARATION OF ROBERT H. J. LOFTUS

Pursuant to 28 U.S.C. 1746, I, Robert H. J. Loftus, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I represented Reza Pahlavi and Medina Development Company throughout the proceedings in two

cases in the Circuit Court of Fairfax County, Virginia, styled Medina Development Company and Reza Pahlavi v. Ahmad Ali Massoud Ansari and Mid-Continental Bank & Trust, (West Indies) Ltd., Chancery No. 115845 and Ahmad Ali Massoud Ansari v. Reza Pahlavi and Medina Development Company, Law No. 97435, and have personal knowledge of the matters set forth in this affidavit.

2. The exhibits attached to the Brief in Support of Plaintiffs' Motion for Partial Summary Judgment are true and correct copies of pleadings, orders, decrees, transcripts, exhibits, depositions, and other parts of the record, or portions thereof, in the above-styled litigation.

3. Between February and October 1991, eleven hearings occurred before Henry Mackall, Commissioner, and the transcripts of those proceedings exceed 1,500 pages. Between January 1992 and May 1992, 18 more hearings took place before the Commissioner, and the transcripts thereof exceed 3,000 pages. As stated by the Commissioner, (See Exhibit 52, p. 8 and Exhibit 33, p.3), the record of the proceedings before the Commissioner fills six large boxes.

4. At least 20 hearings occurred before the Circuit Court of Fairfax County, the transcripts of which exceed 2,000 pages as listed on the attached Exhibit "A'.

5. That Ansari appeared both in person, or by counsel, at all of the hearings before the Commissioner and the Court

I HEREBY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING STATEMENTS CONTAINED IN THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Executed this 7th day of October, 1993.

c: \ansari\rhjldecla

TRANSCRIPT	DATE	PAGES
Hearing before		
The Honorable William L. Winston	01/14/90[1]	98
Hearing before		
The Honorable Jack B. Stevens	05/11/90	21
Hearing before		
The Honorable Jack B. Stevens	06/29/90	8
Hearing before		
The Honorable Lewis Hall Griffith	07/19/90	37
Hearing before		
The Honorable Thomas A. Fortkort	09/10/90	54
Hearing before		
The Honorable Marcus D. Williams	11/27/90	118
Hearing before		
The Honorable Marcus D. Williams	12/06/90	148
Hearing before		
The Honorable Marcus D. Williams	02/07/91	81

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[1]ERROR in this Hearing: Actually should read:

Hearing Before the Honorable Marcus D. Williams on 01/14/91.

Hearing before
The Honorable Marcus D. Williams 03/21/91 75
Hearing before
The Honorable Marcus D. Williams 04/18/91 73
Hearing before
The Honorable Marcus D. Williams 05/08/91 59
Hearing before
The Honorable Marcus D. Williams 06/11/91 74
Hearing before
The Honorable Marcus D. Williams 07/16/91 252
Hearing before
The Honorable Marcus D. Williams 07/17/91 151
Hearing before
The Honorable Marcus D. Williams 10/18/91 28
Hearing before
The Honorable Marcus D. Williams 02/13/92 35
Hearing before
The Honorable Marcus D. Williams 06/09/92 202
Hearing before
The Honorable Marcus D. Williams 08/27/92 43
Hearing before
The Honorable Marcus D. Williams 11/24/92 226

Hearing before

The Honorable Marcus D. Williams	11/25/92	388
	Total	2171